

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDRE KITTRELL,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 23-CV-0811
	:	
BARRY SMITH, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this **28th** day of **April 2023**, upon consideration of Plaintiff Andre Kittrell's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 3), and *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Andre Kittrell, # JJ-1669, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Chester or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Kittrell's inmate account; or (b) the average monthly balance in Kittrell's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent of SCI Chester or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Kittrell's inmate trust fund account exceeds \$10.00, the Superintendent of SCI Chester or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Kittrell's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Chester.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, all of Kittrell's claims against Superintendent Barry Smith, Jeff Mease, Muhammad Naji, April Gardner, Hnatkovich / S. Hnatkovich, J Altemus, M Lvicic, Kerri Moore, "D Varner," P.A. Austin, P.A. Tori, P.A. Jane Doe, Dancha, C/O Smith, Dr. James Angelo Costanzo, Dr. Yucha, Crozier Medical Center, Robert Zekonis, C/O Rivera, Dr. Hummer, Dr. Lutz, CHCA Favoloro, M Quinn, Alicia Ross, MRA Ms Birch, K Eason, Lackawana County Ultra Sound, G Clark, Holli Ike, BHBCS Bureau of Health Care Services, and Department of Corrections are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

6. The Clerk of Court is **DIRECTED** to terminate the Defendants listed in Paragraphs 5.

7. The Clerk of Court is **DIRECTED** to send Kittrell a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

8. Kittrell is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible § 1983 claims against Defendants former Secretary Wetzel and Acting Secretary George Little. **If Kittrell files an amended complaint, his amended complaint must be a complete document that includes ALL of the bases for Kittrell's claims, including claims that the Court has not yet dismissed if he seeks to**

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

proceed on those claims. Claims that are not included in the amended complaint will NOT be considered part of this case. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Kittrell's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 23-811. When drafting his amended complaint, Kittrell should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. **Kittrell may NOT reassert a claim that has already been dismissed with prejudice.** Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

9. If Kittrell does not file an amended complaint the Court will direct service of his initial Complaint alleging: (1) § 1983 deliberate indifference claims asserted against Lt. Oliver, PA Nicholson, Dr. Little, Wellpath, Terry Sechrengost, Dr. Bader, UPMC Altoona, and Dr. Tokhi; and (2) negligence or medical malpractice claims asserted against Sechrengost, Dr. Bader, UPMC Altoona, and Dr. Tokhi for a responsible pleading by those Defendants and on those claims based on his knee injury **ONLY**. Kittrell may also notify the Court that he seeks to proceed on these claims only rather than file an amended complaint. If he files such a notice, Kittrell is reminded to include the case number for this case, 23-811.

10. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Chad F. Kenney

CHAD F. KENNEY, J.